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NOTE AND COMMENT

A LESSON IN PATRIOTISM FROM PENNSYLVANIA.—In the recent report of *Russ* v. *Commonwealth* (Pa. Sup. Court), 60 Atl. Rep. 169, may be found the record of a "legislative junket" of no mean dimensions, which, coupled with judicial bombast on "patriotism," must make interesting reading for the good citizens of the Keystone State.

In 1897 the Senate of Pennsylvania passed a resolution, in which the House concurred, in the following terms:

"Whereas, the dedication of a monument erected in memory of the late General U. S. Grant, in New York, occurs on April 27th, and is a matter of national importance, which the commonwealth of Pennsylvania should suitably recognize as commemorating the life and deeds of a hero, whose memory we revere; therefore be it resolved (if the House concur), that the members of the Senate and House of Representatives attend such dedication in a body, and that all matters pertaining to such attendance be referred to the committee of military affairs of the Senate and House."

On the day of the dedication of the monument, and between the hours of 11:30 A. M. and 6 P. M., the plaintiff Russ entertained the 253 members of the legislature and their 172 guests at luncheon and dinner on the excursion boat which carried the patriots from Jersey City up the Hudson to the monument.

For this entertainment, plaintiff, having been authorized by an act of 1903 to sue the commonwealth, presents the following statement of account—claiming $5,911.16 with interest from May 1, 1897:

"Legislature of Pennsylvania, Excursion to New York City, General Grant Monument Dedication.

To James Russ, Dr.

1897, April 27.	To table supplies	$1,678 36	
	Wines and liquors	3,026 60	
	Supper at Dooner's for Com	61 90	
	J. H. Riebel, cigars	450 00	
	Hire of china and breakage	187 53	
	Employes' services	240 00	
	Car fare	202 50	
	Purchase of stoves	70 00	
	Freight charges	8 75	
	James Russ, incidental expenses	175 00	
			$6,100 16
Cr.	By liquors returned	$157 00	
	Sale of stoves	32 00	
			189 00
			$5,911 16"

The plaintiff testified that what the committee "put out specially was 'white seal champagne'"; and further: "Oh, Lord! I furnished everything. They had a nice lunch and very fine dinner. I didn't calculate at all. There was no price whatever. If it cost $5,000,000, there was no price at all that was to it. Q. Do you know the price charged for the returned liquors? A. Just that much there. It was very lucky any was returned at all." And Senator Krause, chairman of the arrangement committee, testified that "White Seal —wasn't any too good for the members of the Legislature, we thought. * * Oh, it was so fine that I forget exactly all the elegancies that we had. * * * We had plenty of whisky, and we had plenty of beer, and plenty of apollinaris. I don't know how many drank apollinaris, but apollinaris was furnished."

It will be noticed that the crowd of 425 persons consumed $450 worth of cigars, which the plaintiff seems to have bought of "J. H. Riebel." The report shows that John Riebel, a cigar manufacturer of Philadelphia, was a member of the House military committee and of the committee of arrangements for the excursion; and he testified that the plaintiff "supplied one of the finest dinners a man wanted to sit down to, served on the boat; had all the elegancies of the season—anything you can mention in the eatable line, almost."

The plaintiff was non-suited in the trial court because authority from the state to the committees of military affairs to contract with him was deemed to be lacking. A majority of the Supreme Court, however,—MESTREZAT and POTTER, JJ., dissenting—are of opinion that there was such authority, because

"the authority of the law here was the reference of all matters pertaining to the attendance to the committees of military affairs of the Senate and House."

After discussing the powers of the Legislature under the Constitution, the Court says: "The payment of expenses by the state in having itself fittingly represented, when it ought to be represented on great public occasions, involves nothing but the maintenance of its own dignity; and who shall represent it, or how it shall be represented, is for the Legislature alone. If, in their judgment, its members, representing every portion of the state, ought to do so, who can better represent the commonwealth?"

Considering the items of plaintiff's bill, we ask, "who, indeed?" If, in view of these items, the dignity of the state was "maintained," who can say that the state was not "fittingly represented" on that memorable occasion? For note how small is the charge for "breakage"—a really creditable indication of the capacity of Pennsylvania statesmen for maintaining dignity under trying circumstances!

But the Court goes further, and, with this record before it, instead of simply passing on the legal questions involved in the case, seems to sanction a gross abuse of legislative power in this language: "From time out of mind, legislative bodies have, at the public expense, and with hearty popular approval, paid fitting tribute to the deserving dead, who, in peace or war, had served the state or nation; and public money so expended is well spent for the public, for it strengthens and elevates patriotism, and helps to make better men and women of the young who witness the homage so paid. But this digression need proceed no further."

Most emphatically, it need not! This turgid talk of patriotism is most inappropriate in view of the coarse testimony of members of the Assembly's committee, and can not even be justified as a feeble attempt to maintain the "dignity of the state" which the Assembly seems to have ignored. How much "better men and women" must indeed have been made of "the young" among the 172 hangers-on of this gormandizing crowd as they "witnessed the homage so paid"—as they witnessed the "strengthening" and "elevating" of the lawmakers' "patriotism"!

The Court says: "In disposing of the questions raised on this appeal, we have nothing to do with the appellant's claim as presented in the court below, and it would therefore be improper for us to say anything about it." Not being troubled with this delicate sense of propriety, the dissenting Justices say: "The character of the claim conclusively rebuts any implication that the Legislature, in passing the resolution, intended to authorize the committee to make a contract for it. Such interpretation of the resolution opens the door to raids upon the state treasury by committees of the Legislature by which the taxpayers of the state can be made to pay claims which, as in this instance, neither the General Assembly of the commonwealth, nor any other self-respecting legislative body, would for an instant think of approving. * * * About $1,700 worth of food and $3,000 worth of wines and liquors were consumed on the steamer by the 425 guests of the state in six and a half hours. This tells the brief but comprehensive story of the manner in which the money claimed here was applied (in the language of the preamble to the

joint resolution) 'in commemoration of the life and deeds of a hero whose memory we revere.' Further comment upon the subject is unnecessary. To hold that authority was conferred upon the legislative committee by the concurrent resolution to contract for such a claim is violative of all sound rules of interpretation, and is not supported by reason or authority."

One should not permit himself to be deluded with the idea that the members of the Assembly of 1897 *represented* the people of the state. As pointed out in 1898 by President Hensel of the Bar Association (*Vol. IV, Penn. Bar Association Rep., p. 112*), "the election of a United States Senator * * * largely controlled the original selection of the members, and its results deeply influenced the general movement of the session." One might perhaps pardon the members of the Assembly for themselves thinking and resolving that their attendance at the Grant monument dedication might be taken as a suitable recognition by the commonwealth of the importance of the event, but that the Court should bring itself to make such an admission is somewhat humiliating. The Assembly recognized its great obligations to the Pennsylvania Railroad Company for "providing transportation" (Penn. P. L. 1897, p. 543),—so, by the way, the nearly 50 cents a head for "car-fare" in plaintiff's claim must have gone into the coffers of some really soulless and heartless corporation,—but for the "strengthening" and "elevation" of the transported Assembly's "patriotism" who shall pay?

That great lawyer and patriot, James Wilson, of Pennsylvania, said, in speaking of the Pennsylvania Legislature: "Each house will be cautious, and careful, and circumspect, in those proceedings, which, they know, must undergo the strict and severe criticism of judges, whose inclination will lead them, and whose duty will enjoin them, not to leave a single blemish unnoticed or uncorrected." (*Wilson's Works*, II, 28.)

But that was a long time ago!

THE EFFECT OF A MOTION BY EACH PARTY FOR A DIRECTED VERDICT.—An interesting example of judicial legislation long ago arose in New York and has been perpetuated by the courts of that state. This was the holding that when each party to an action made a motion upon the trial that the court direct a verdict in his favor, such proceeding was in effect a consent to submit to the court all questions of law and fact, and was a waiver of the right to have the questions of fact go to the jury. And since, under this rule, the parties were deemed to clothe the court with the functions of a jury, a directed verdict stood as would the finding of a jury without any direction, and therefore the review of the case was governed by the same rules that applied in cases of ordinary verdicts, all controverted facts and all facts inferable in support of the judgment being deemed conclusively established in favor of the party for whom the verdict was directed. *Koehler* v. *Adler* (1879), 78 N. Y. 290; *Thompson* v. *Simpson* (1891), 128 N. Y. 283; *Trustees* v. *Vail* (1897), 151 N. Y. 468; *Porter* v. *Ins. Co.* (1900), 164 N. Y. 504; *Northam* v. *Ins. Co.* (1901), 165 N. Y. 666; *Sigua Iron Co.* v. *Brown* (1902), 171 N. Y. 488; *Leggat* v. *Leggat* (1903), 79 App. Div. 141.